

REMARKS

Claims 1, 3, 6, 10 and 11 have been amended. Claims 1-11 currently are pending.

Claims 10 and 11 are rejected under 35 USC §§ 101/112 because the claims do not set forth any steps involved in the method/process, and because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim.

In response applicant amend claims 10 and 11 into claims which are proper under 35 USC §§ 101/112.

Claims 1, 2, and 6-9 are rejected under 35 USC § 102(b) as being anticipated by Blackett et al. (US 2,774,759). The examiner believes Blackett et al. disclose a crystalline choline ascorbate produced by reacting trimethylamine and ethylene oxide at 30°C.

Anticipation can only be established by a single prior art reference which discloses each and every element of the claimed invention. *RCA Corp. v. Applied Digital Data Systems, Inc.*, 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984).

Blackett et al. do not teach each and every element of claim 1 because Blackett et al. do not disclose any salt of choline ascorbate in either the crystalline, amorphous, or the oily form. Blackett et al.'s invention relates to an improved process of preparing choline base and choline salts. Also, Blackett et al.'s process does not produce the

VOELKEL et al., Ser. No. 10/076,514

claimed crystalline choline ascorbate. The procedure disclosed by Blackett et al. produces a choline ascorbate which only can be isolated as a highly viscous oil (col. 3, line 55).

The examiner stated that claim 6 is written as a product-by-process claim. Applicants disagree. Claim 6 is a process claim as it recites "A process for preparing crystalline ascorbate by..."

The examiner rejected claims 1-11 under 35 USC § 103(a) as being unpatentable over Blackett et al. (US 2,774,759) in view of Spires et al. (US 4,394,977). The examiner believes the claims are rendered obvious because even though Blackett et al. is silent about possible uses for the compound other than possible forms including pellets, pills and capsules, Spires discloses embodiments where choline ascorbate and other salts are incorporated into pharmaceutical formulations and feed preparations.

To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). Applicants do not believe combining Blackett et al. and Spires et al. arrives at the present invention. This is because, as already stated, Blackett et al. do not disclose any kind of salts of choline ascorbate. Spires et al. only discloses choline ascorbate which only can be isolated as a highly viscous oil, whose purity and stability are not always sufficient for food and pharmaceutical preparations. Therefore, Blackett et al. and Spires et al. taken alone or together do not teach the inventive crystalline choline ascorbate nor the process of producing this crystalline choline ascorbate.

VOELKEL et al., Ser. No. 10/076,514

For the reasons expressed above, it is urged that the prior art references cited by the examiner either singly or in combination fail to anticipate or suggest the present invention as defined by the amended claims. Accordingly, a *prima facie* case of obviousness has not been established by the examiner, and the rejection under 35 USC § 103 should be withdrawn.

A check for \$930.00 for a three month extension of time is attached. Should this be deficient, kindly charge to Deposit Account No. 11-0345. Please credit any excess fees to such account.

Respectfully submitted,
KEIL & WEINKAUF



Daniel S. Kim
Reg. No. 51,877

1350 Connecticut Ave., N.W.
Washington, D.C. 20036
(202)659-0100
DSK/lc